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13
14 **UNITED STATES DISTRICT COURT**
15 **DISTRICT OF NEVADA**

16 ORACLE USA, INC., a Colorado corporation;
17 ORACLE AMERICA, INC., a Delaware
18 corporation; and ORACLE INTERNATIONAL
19 CORPORATION, a California corporation,

20 Plaintiffs,

21 v.

22 RIMINI STREET, INC., a Nevada corporation;
23 and SETH RAVIN, an individual,

24 Defendants.

25 Case No. 2:10-cv-0106-LRH-PAL

26 **APPENDIX II IN SUPPORT OF**
27 **DEFENDANTS' OPPOSITION TO**
28 **ORACLE'S RENEWED MOTION**
FOR A PERMANENT INJUNCTION

29 **RIMINI'S PROPOSED ORDER**
30 **DENYING ORACLE'S RENEWED**
31 **MOTION**

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42 Exhibit M: Cited Testimony of Former Oracle Customers
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54 Exhibit S: Oracle's Trial Exhibit 2155
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Appendix II:

Rimini's Proposed Order Denying Oracle's Renewed Motion

1 APPENDIX II
2

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15 UNITED STATES DISTRICT COURT
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17 ORACLE USA, INC., a Colorado corporation;
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26 Case No. 2:10-cv-0106-LRH-PAL
27

28 **[PROPOSED] ORDER DENYING
ORACLE'S RENEWED MOTION FOR A
PERMANENT INJUNCTION**

Judge: Hon. Larry R. Hicks

Pending before this Court is Oracle's Renewed Motion for Permanent Injunction Against Defendant Rimini Street Inc., Docket 1117 (the "Motion"). Having considered the Motion, all related filings, and the record before the Court, IT IS HEREBY ORDERED THAT the Motion is DENIED, for the following reasons:

Although the Copyright Act, 17 U.S.C. § 504, authorizes injunctive relief in certain circumstances, the Court awards such relief only when consistent with traditional principles and considerations of equity governing injunctive relief. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 392 (2006). Such relief is "extraordinary," *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008), and does not "automatically follow[] a determination that a copyright has been infringed," *eBay*, 547 U.S. at 392-93. Consistent with the Ninth Circuit's remand, *see Oracle USA, Inc. v. Rimini St., Inc.*, 879 F.3d 948, 965 (9th Cir. 2018), the Court hereby reconsiders injunctive relief in light of the four factors governing such relief under *eBay*. Oracle has submitted a proposed injunction identical to that originally entered by this Court, *compare* Dkt. 1117, *with* Dkt. 900, and rests its entitlement to such relief on the same evidence that was before this Court previously, except that the Court cannot consider harms alleged to have stemmed from the jury's now-vacated verdict that Rimini violated certain state anti-hacking statutes, *see Oracle*, 879 F.3d at 962. Oracle's renewed motion fails to carry its burden and the Court therefore denies it.

1. Oracle fails to establish that it has suffered an "irreparable injury," *eBay*, 547 U.S. at 391, and that there is "a real or immediate threat of imminent harm in the future" of such irreparable injury, *Jacobsen v. Katzer*, 609 F. Supp. 2d 925, 937 n.3, 938 (N.D. Cal. 2009). Oracle contends that Rimini caused harm to its business reputation and goodwill. Dkt. 1117 at 14. But this Court's prior finding of such irreparable injury, Dkt. 1049 at 5-6, was also premised on harms resulting from the state-law hacking verdicts, which have now been reversed, *see Oracle*, 879 F.3d at 964. The jury also declined to find that Oracle lost profits or that Rimini tortiously interfered with Oracle's relationships with its customers. Dkt. 896.

Moreover, the testimony cited by Oracle—of Oracle Co-CEO Safra Catz, expert witness Edward Yourdon, and Rimini executive Kevin Maddock, *see* Tr. 935:11–17, 443:4–445:6, 1453:22–1476:6, 1702:18–1703:22—fails to establish a sufficient causal nexus between Oracle's claimed

1 irreparable injury and the specific aspects of Rimini's conduct held infringing by the Ninth Circuit.
 2 This testimony on which Oracle relies does not "directly tie[] consumer demand for [Rimini's support
 3 services] to [Rimini's] allegedly infringing feature[s]." *Apple Inc. v. Samsung Elecs. Co.*, 695 F.3d
 4 1370, 1375 (Fed. Cir. 2012); *see also Perfect 10, Inc. v. Google, Inc.*, 653 F.3d 976, 982 (9th Cir. 2011)
 5 (party's failure to "show[] a sufficient causal connection between irreparable harm" and infringement
 6 dooms a claim for "injunctive relief").

7 Oracle also claims to have adduced evidence of infringement in separate, ongoing proceedings
 8 between Oracle and Rimini. Those allegations shall be resolved in those separate proceedings, in
 9 accordance with the Court's prior orders. *See Dkt. 515, 669, 723*. Oracle has not disputed the evidence
 10 submitted by Rimini in this case, demonstrating that Rimini invested substantial sums of money to
 11 modify its software support processes after this Court held at summary judgment in 2014 that some of
 12 those processes were infringing. *See Dkt. ___, Ex. C.* Nor do the parties dispute that the jury found
 13 Rimini to be an innocent infringer, Dkt. 896, *i.e.*, that Rimini "was not aware that its acts constituted
 14 infringement" and had "no reason to believe that its acts constituted an infringement," Dkt. 880 at 43.
 15 Oracle has therefore failed to demonstrate a risk of future infringement as to the adjudicated processes
 16 addressed by the Ninth Circuit. Thus, Oracle has failed to show irreparable injury.

17 2. The Court further declines to issue an injunction because Oracle has not demonstrated that
 18 it lacks an adequate remedy at law. The jury awarded Oracle \$35.6 million as "an objective measure
 19 of Oracle['s] ... damages ... meant to approximate the fair market value of a license for all of the
 20 copyrights Rimini Street infringed," Dkt. 880 at 41, and the Court awarded Oracle a \$22 million
 21 prejudgment interest award, to compensate Oracle for the deprivation of its exclusive rights under the
 22 Copyright Act. *Oracle*, 879 F.3d at 964. Oracle has failed to demonstrate that these remedies are
 23 inadequate. To the extent Oracle complaints of Rimini's revised processes in separate, ongoing
 24 proceedings, it may seek relief in those proceedings. Oracle has an adequate remedy at law for the
 25 infringements adjudicated in this case.

26 3. Oracle has also failed to demonstrate that the balance of hardships favors an injunction.
 27 Oracle has not presented evidence in this proceeding that Rimini is engaging in adjudicated infringing
 28 conduct or likely to do so in the future. Rimini has presented evidence that complying with Oracle's

1 proposed injunction, which Rimini reads as being overbroad, would result in millions of dollars per
2 year in additional compliance costs. Dkt. __ at 16; *see also id.* Ex. Q. Oracle has not presented counter
3 evidence. The balance of hardships thus favors Rimini.

4 4. Finally, while in general some injunctions may serve the public interest to ensure deterrence
5 of future copyright infringement (thus promoting the creation of new original works), the Court finds
6 that the proposed injunction here would not. Injunctions do not automatically serve the public interest
7 simply because infringement has occurred. *ActiveVideo Networks, Inc. v. Verizon Commc’ns, Inc.*, 694
8 F.3d 1312, 1341 (Fed. Cir. 2012). As the Ninth Circuit held, Rimini is engaged “in lawful competition”
9 with Oracle’s maintenance services. *Oracle*, 879 F.3d at 952. The public interest is best served by
10 concluding this lawsuit.

For the foregoing reasons, Oracle's renewed motion is DENIED.

IT IS SO ORDERED.

DATED:

By:

Hon. Larry R. Hicks
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2018, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, District of Nevada, using the electronic case filing system. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

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